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Supreme Court of the United States

OCTOBER TERM, 1932

No. 390

BROAD RIVER POWER COMPANY, APPELLANT,

versus

WALTER G. QUERY, J. P. DERHAM, AND FRANK C. ROBINSON, AS MEMBERS OF AND CONSTITUTING THE SOUTH CAROLINA TAX COMMISSION, APPELLEES.

BRIEF OF APPELLEES

JOHN M. DANIEL,
Columbia, S. C.,
Attorney General for South Carolina.
J. FRASER LYON,
Columbia, S. C.,
Solicitors for Appellees.

THE R. L. BRYAN CO., COLUMBIA, S. C.
1-9-33-60

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I

OPINION OF COURT BELOW

The opinion below upon which an interlocutory injunction was denied (*South Carolina Power Company v. South Carolina Tax Commission*) is reported in 52 F. (2d.), 515. The opinion upon which a permanent injunction was denied and the bill dismissed will be found in the Record, page 53. These opinions were rendered in three cases against South Carolina Tax Commission. South Carolina Power Company has not appealed to this Court. The cases of Broad River Power Company and Lexington Water Power Company are now on appeal to this Court and are being argued together.

THE QUESTIONS INVOLVED

The question involved in these cases is the constitutionality of a statute of South Carolina which levies a tax of one-half mill per kilowatt hour on electricity generated and sold within the State.

II

STATEMENT OF THE CASE

This appellant is incorporated under the laws of South Carolina and its only business is done within the State. It is engaged in the generation of electric energy by the use of both water and steam power (R-3).

The assignments of error in this case are in substance and effect the same as the assignments in the *Lexington Water Power Company case,* except there is no assignment of error in this case as to gas companies not being taxed, nor as to the taxation of a federal agency, and Article I, Section 8 of the Constitution of South Carolina.

III

SPECIFICATION OF ERRORS

As to the specification of errors, appellees contend that there was no denial of the equal protection of the laws:

(1) In exempting from taxation the production of electricity by the use of oil or internal combustion engines;

(2) In exempting from the tax industrial plants generating power for its own use, or for use upon its own premises by its *bona fide* operatives or employees; and,

(3) In exempting from the tax sellers of electricity on which a generation tax had theretofore been paid.

IV

ARGUMENT

The appellees in support of their contentions herein, respectfully refer to the brief filed in case No. 391, which is argued herewith.

V

CONCLUSION

The judgment of the Court below should be affirmed.

Respectfully submitted,

JOHN M. DANIEL,
Attorney General for South Carolina.

J. FRASER LYON,
Solicitors for Appellees.